viz., section 30(1) which is substantially the same as section 20(a) of the Ordinance. In that case an injured workman received payments from his employer on the understanding that they were not to prejudice his right of action at common law against a third party in respect of his injury, and would be repayable by him in the event of his succeeding in such action, but would otherwise be treated as payments of workmen's compensation. It was held that in accepting the payments on the conditions mentioned the workman had not "recovered compensation" within section 30(1) of the English Act and so was not precluded by that subsection from recovering damages in an action against the third party. In that case the payment by the employers and the acceptance by the workman were entirely conditional. In the present case, in my opinion, the payment by the Singapore Harbour Board and the acceptance by the plaintiff were entirely unqualified and unconditional and the plaintiff cannot now recover damages from the defendants. It is to be observed that the plaintiff's acceptance of the compensation is confirmed by his solicitors' letter of the 19th November, 1957.

It was also argued, as I understood it, that because the written agreement under which the plaintiff accepted the compensation had not been recorded as provided by section 28(1) of the Ordinance, the plaintiff, although he had received the compensation had not recovered it, within the meaning of section 20(a) of the Ordinance. There is, in my view, no merit in this argument. The recording of the agreement by the Commissioner for Labour is mandatory except in cases in which it appears that it should not be so recorded by reason of the inadequacy of the amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means. None of these elements are present in this case. The amount paid was the maximum that could be claimed under the Ordinance and there was no suggestion of fraud, undue influence or other improper means.

There is no evidence before me as to whether the agreement has now been registered or not, but in any event so far as the defendants are concerned it is, in my opinion, irrelevant.

The sole question for determination is has the plaintiff recovered compensation and the answer to that question is, in my view, in the affirmative.

In these circumstances the plaintiff is, in my judgment, debarred from recovering damages from the defendants by reason of the provisions of section 20(a) of the Ordinance.

The defendants must have their costs of these proceedings.

Order accordingly.

Solicitors: *Muthu & Co.; Drew & Napier.*

COMPTROLLER OF INCOME TAX v. Q.R.S.

[A.C.J. (Wee Chong Jin J.) July 28, 1961]

[Singapore — District Court Appeal No. 14 of 1958]

Income Tax — Additional Assessments — Profits from sale of house — Whether profits from a trade or business — Calculation of profits — Principles — Income Tax Ordinance (Cap. 166), s.10(1)(a).

In this case the Comptroller of Income Tax raised four additional assessments against the taxpayer on the basis that they were profits from the sale of houses built by the taxpayer on behalf of his wife on land belonging to her which she had purchased in 1937. The taxpayer objected to these additional assessments, but the Comptroller refused to amend his additional assessments. The taxpayer appealed to the Board of Review on the ground that whatever profits that accrued to the taxpayer's wife resulting from the sale of the houses were not profits from a trade or business within the meaning of section 10(1)(a) of the Income Tax Ordinance, or alternatively that the Comptroller in arriving at the profits was wrong in valuing the land at its cost to the taxpayer's wife. The Board dismissed the appeal finding on the evidence that the taxpayer was carrying on a trade, but holding that it was just and equitable that the date for valuing the land for the purposes of assessment should be January 1, 1948. The Comptroller now appeals contending that the Board erred in law in holding that the date should be January 1, 1948. The taxpayer cross-appealed, contending that the said profits were not from a trade or business.

Held: (1) unless there is statutory provision otherwise, in calculating profits one applies normal commercial principles. There is not room in a taxing statute for just and equitable considerations;

(2) in view of the facts in this case it could not be said that the Board's finding was erroneous in point of law. The facts of this warrant a determination either way and that therefore the Board's finding cannot be upset on appeal.

Case referred to:—

(1) *Edwards* v. *Bairstow*, 36 T.C. 207.

INCOME TAX APPEAL.

G. Hill for the appellant.

Tan Boon Chiang for the respondent.

Cur. Adv. Vult.

Wee Chong Jin J.: The Comptroller of Income Tax by two additional notices of assessment assessed the taxpayer for the year of assessment, 1950 to tax in the sums of $257.52 and $634.48 on the basis of further chargeable incomes of $4,219 and $5,161, respectively.

By two further notices of additional assessment, the Comptroller assessed the taxpayer to tax for the year of assessment, 1951 in the sums of $6,053.80 and $8,955.70 on the basis of further chargeable incomes of $37,119 and $34,146, respectively.

These four additional assessments were raised against the taxpayer on the basis that they were profits from the sale of houses built by the taxpayer on behalf of his wife on land belonging to the taxpayer's wife which she had purchased in the year 1937, many years before the introduction of income tax into the State.

The taxpayer objected to these four additional assessments on the ground that the basis adopted by the Comptroller in valuing the land at its cost to the taxpayer's wife was not fair and reasonable and that the land should be

valued as at the 1st of January, 1948, the date when Income Tax was first introduced into this State.

The Comptroller refused to amend his additional assessments and the taxpayer thereupon appealed to the Board of Review on the ground that whatever profits accrued to the taxpayer's wife resulting from the sale of houses built on the land in question were not profits from a trade or business within the meaning of section 10(1)(a) of the Income Tax Ordinance (Cap. 166), or alternatively, that the Comptroller in arriving at the profits was wrong in valuing the land at its cost to the taxpayer's wife.

The Board dismissed the taxpayer's appeal, finding on the evidence that the taxpayer was carrying on a trade, but holding that it was just and equitable that the date for valuing the land for the purposes of assessment should be the 1st January, 1948, the date when income tax was first introduced into the State.

The Comptroller now appeals against the decision of the Board that the land for the purposes of assessment should be valued as at 1st January, 1948, and the taxpayer has cross-appealed against the decision of the Board that he was carrying on a trade or business and that the profit from the sale of the houses built on the land was profit from the carrying on of a trade or business.

I will deal first with the Comptroller's appeal against the decision of the Board. Mr. Hill, for the Comptroller, contends that the Board erred in law in holding that the value of the land should be taken as at 1st January, 1948 because it was just and equitable to do so. His contention is that unless there is statutory provision otherwise, in calculating profits one applies normal commercial principles. I agree. There is no room in a taxing statute for just and equitable considerations.

Gains or profits from a trade or business must, I think, be arrived at on ordinary commercial principles, subject to such provisions of the Income Tax Ordinance as require a departure from such ordinary principles. In so far as the business activity connected with the building and selling of houses and the development of land is concerned, land is trading stock and therefore has to be treated for tax purposes in the same way as trading stock of any other kind. It follows that land as trading stock, in accordance with ordinary commercial principles, has to be valued at its cost or market value whichever is the lower, there being no provisions in the Ordinance otherwise.

I will now deal with the cross-appeal by the taxpayer. The principles which govern a case of this sort have since *Edwards* v. *Bairstow*, [1] been finally settled. As stated by Lord Radcliffe (p. 227 *et seq.*):

> "All these cases in which the facts warrant a determination either way can be described as questions of degree and therefore as questions of fact. . . . . But, of course, in proper circumstances a case can be described as one of fact . . . . . without going through the procedure of explaining that is so because it is one of degree and, the facts fairly admitting of the determination come to, there is no error which justifies the Court's intervention. . . . . The true clue to the understanding of the position lies, I think, in recalling that the Court can allow an appeal from the Commissioners' determination only if it is shown to be erroneous in point of law."

Again, ever since *Edwards* v. *Bairstow* it is settled law as to what constitutes error of law for this purpose. If the determination contains anything *ex facie* which is bad in law and which bears upon it, it is obviously erroneous in point of law.

> "But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the Court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law." (*Per* Lord Radcliffe at p. 229).

The proper test to apply then being whether on the evidence the true and only reasonable conclusion contradicts the determination, let us examine the evidence adduced before the Board. The taxpayer's wife in July 1937 purchased approximately three acres of land for $11,000, part of the purchase price being raised by a mortgage of the land at the time of purchase. The land was a rambutan plantation and according to the taxpayer the intention at the time of purchase was to plant fruit trees on the land. However, soon after the purchase the land was subdivided into lots, four of which totalling 39,302 square feet were sold in 1938 at a total price of $6,429. From 1939 until 1950 there were no further sales. In 1950 the taxpayer began to develop the remainder of the land and built fifteen houses on it, twelve of which, the profits wherefrom are the subject matter of this appeal, were sold leaving three unsold houses and four vacant lots as yet unbuilt. In 1954 the taxpayer wrote a letter to the Comptroller stating that he intended to sell the remaining houses built on this land.

In my view on these facts it cannot be said that the Board's finding was erroneous in point of law. It seems to me to be eminently a case in which the facts warrant a determination either way and that therefore the Board's finding cannot be upset on appeal.

For these reasons the appeal is allowed and the cross-appeal dismissed with costs.

Appeal allowed.
Cross-appeal dismissed.

Solicitors: *Rodyk & Davidson; Laycock & Ong.*